

Before the
Administrative Hearing Commission
State of Missouri



SPOKES & SPANDEX BIKE, LLC,

Petitioner,

vs.

DIRECTOR OF REVENUE,

Respondent.

No. 15-0303 RS

DECISION

We dismiss the appeal filed by Spokes & Spandex Bike, LLC, because it was untimely filed.

Procedure

On March 2, 2015, Steven Cooper filed a complaint on behalf of Spokes & Spandex, appealing a penalty assessment issued by the Director of Revenue (“Director”). On March 23, 2015, the Director filed a motion to dismiss on the ground that the appeal was untimely. We notified Cooper that an attorney could respond to the motion by April 9, 2015. Cooper filed correspondence in response to the motion, but no attorney filed a response.

We may grant a motion for involuntary dismissal based on a preponderance of admissible evidence. Regulation 1 CSR 15-3.436(3).¹ Admissible evidence includes an allegation in the

¹ All references to the CSR are to the Missouri Code of State Regulations as current with amendments included in the Missouri Register through the most recent update.

complaint, discovery response of the petitioner, affidavit, or other evidence admissible under the law. *Id.* The Director filed the affidavit of a custodian of records with her motion. We base our findings of fact on the contents of Spokes & Spandex's complaint and the Director's affidavit.

Findings of Fact

1. The Director issued a final decision to Spokes & Spandex, assessing it a \$10,000 penalty for engaging in the business of selling tangible personal property within this state without a valid Missouri retail sales tax license for the period of March 7, 2014 through the date of the assessment. The final decision was sent to Spokes & Spandex by certified mail on December 19, 2014.

2. The final decision is dated December 19, 2014, and states that the assessment will become due and payable on February 17, 2015.

3. The final decision contains the following notification:

This is the Final Decision of the Director of Revenue. If you are adversely affected by this decision, you may appeal to the Administrative Hearing Commission, Post Office Box 1557, Jefferson City, Missouri 65102-1557. To appeal, you must file a petition with the Administrative Hearing Commission within sixty (60) days after the date this decision was mailed or the date it was delivered, whichever date was earlier. If any such petition is sent by registered mail or certified mail, it will be deemed filed on the date it is mailed. If it is sent by any method other than registered mail or certified mail, it will be deemed filed on the date it is received by the commission as stated in Section 621.050.1, RSMo.

4. Cooper filed the appeal on behalf of Spokes & Spandex on March 2, 2015.

Conclusions of Law

This Commission has jurisdiction over appeals from the Director's final decisions. Section 621.050.² However, our jurisdiction comes from the statutes alone, and is bounded by those statutes. *State Bd. of Regis'n for the Healing Arts v. Masters*, 512 S.W.2d 150, 161 (Mo. App., K.C.D. 1974). Section 144.261, which applies to appeals from sales tax assessments, states:

² Statutory references are to RSMo 2000, unless otherwise noted.

Final decisions of the director under the provisions of this chapter are reviewable by the filing of a petition with the administrative hearing commission in the manner provided in section 621.050, RSMo; except that, notwithstanding the provisions of section 621.050, RSMo, to the contrary, **such petition must be filed within sixty days after the mailing or delivery of such decision, whichever is earlier.**

(Emphasis added).

In this case, the Director mailed her final decision to Spokes & Spandex on December 19, 2014. Although notified of its appeal rights, Spokes & Spandex filed its appeal on March 2, 2015 – more than sixty days after December 19, 2014. Spokes & Spandex’s untimely filing deprives us of authority to hear its appeal.

In his correspondence, Cooper asks that we take into consideration that he has been in financial distress, but has been trying to make payments and come into compliance. We cannot consider a response filed by a non-attorney on behalf of an LLC. Even if we could, we have no authority to apply the doctrines of equity, as Cooper requests. *Soars v. Soars-Lovelace, Inc.*, 142 S.W.2d 866, 871 (Mo. 1940). We note, however, that our dismissal of this case does not prevent Cooper from continuing to work with the Director’s representatives to bring Spokes & Spandex into compliance.

If we lack jurisdiction to hear a complaint, we can take no action other than to exercise our inherent power to dismiss it. *State Bd. of Registration for Healing Arts v. Draper*, 280 S.W.3d 134, 136 (Mo. App., E.D. 2009). Accordingly, we grant the Director’s motion.

Summary

We grant the Director’s motion to dismiss.

SO ORDERED on April 10, 2015.

/s/ Karen A. Winn

KAREN A. WINN
Commissioner